

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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:  
UNITED STATES OF AMERICA,  
:  
Plaintiff,  
:  
-and- **SPECIAL MASTER’S**  
**REPORT NO. 2**  
:  
THE VULCAN SOCIETY, INC., for itself and on behalf of **07-cv-2067 (NGG)(RLM)**  
its members, and MARCUS HAYWOOD, CANDIDO  
:  
NUÑEZ and ROGER GREGG, individually and on behalf  
:  
of a class of all others similarly situated,  
:  
Plaintiffs-Intervenors,  
:  
-against-  
:  
THE CITY OF NEW YORK,  
:  
Defendant.  
:  
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MARY JO WHITE, Special Master.

The Special Master submits this report on her activities pursuant to paragraph 4 of the Court’s June 1, 2010 Order Appointing Special Master (the “Appointment Order”) (Dkt. No. 448, ¶ 4). This report covers the 30-day period from the date of Special Master’s Report No. 1, July 1, 2010, to the present (Dkt. No. 459).<sup>1</sup>

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<sup>1</sup> In accordance with the Appointment Order, the Special Master will submit separately an itemized statement of expenses to the Court (Appointment Order, ¶14.)

## **I. Preliminary Matters**

As previously reported, the Special Master ordered weekly conferences of the parties (until further notice) and set dates for those conferences through the end of September (Special Master's Order No. 3, ¶ 14, Dkt. No. 453). Since her last report, the Special Master has held three additional conferences on July 7, 2010, July 12, 2010 and July 27, 2010 (the "July Special Master Conferences").<sup>2</sup>

## **II. Preparation for Hearing on Validity of Written Exam 6019**

Between July 1 and the start of the hearing on the validity of Written Exam 6019 ("Exam 6019") on July 20, the Special Master communicated with the parties regularly concerning their submission of prehearing materials. The parties did not bring any new discovery disputes to the attention of the Special Master during this period. At the July 7 conference with the Special Master, however, Defendant informed the Special Master that it would be making a motion *in limine* to exclude testimony from Dr. Joel P. Weisen, whom Plaintiffs-Intervenors had identified as a potential witness at the hearing a day earlier. Defendant subsequently filed the motion objecting to Dr. Weisen's testimony in part on the ground that the disclosure of his expert opinion was untimely. Plaintiffs-Intervenors argued in response that it was not possible for them to submit the report earlier because Defendant had only recently produced the data on which Dr. Weisen's report was based. At the Court's request, the Special Master submitted a report on the

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<sup>2</sup> The conference scheduled for July 20, 2010 conference was cancelled because the hearing on the validity of Exam 6019 was set – pursuant to the expedited schedule – for the same day (Special Master's Order No. 6, Dkt. No. 457).

discovery issues underlying the dispute (Dkt. No. 470). The Court decided the motion in Defendant's favor on July 12 (Dkt. No. 471).

The July Special Master Conferences also included some discussion of remediation issues, with the Special Master encouraging the parties to attempt to reach agreement with respect to the appropriate remedy if the Court were to determine that Exam 6019 is not job-related. The parties were unable to reach agreement on this issue in advance of the hearing. At the Court's request, the Special Master submitted the parties' correspondence on this issue to the Court prior to the beginning of the hearing (Dkt. No. 482).

The hearing on the validity of Exam 6019 proceeded as scheduled on July 20 and July 21, 2010. With the conclusion of the hearing on Exam 6019, the Special Master's mandate to facilitate timely review of Exam 6019 by the Court under paragraph 2.a of the Appointment Order is completed.

### **III. Development of New Firefighter Eligibility Test**

A number of preparatory steps for the development of a new entrance examination (the "New Test") have been completed since the last Special Master's Report (Dkt. No. 459).

First, all of the parties have now selected an expert consultant to advise them in connection with the New Test development process. As previously reported, Defendant has retained Dr. John Weiner of PSI Services Inc., and Plaintiffs-Intervenors have retained Dr. Harold Goldstein, a professor of industrial/organizational psychology at

Baruch College, the City University of New York. On July 2, Plaintiff informed the Special Master that Dr. David Jones, Plaintiff's expert witness during the Exam 6019 hearing, would serve as their consultant during the New Test development process. None of the parties objected to any of the other parties' selections.

Second, the Special Master has selected a consultant, Dr. Shane Pittman, to assist her in performing her duties under paragraph 2.b of the Appointment Order. In accordance with the Appointment Order, the Special Master gave notice of her intent to retain Dr. Pittman as a consultant on July 26, 2010. A copy of the notice, including Dr. Pittman's curriculum vitae, is attached hereto as Exhibit 1. The Special Master discussed Dr. Pittman's selection during the July 27 weekly conference, and none of the parties objected to Dr. Pittman's selection. The Special Master intends to submit a proposed budget for Dr. Pittman's work to the Court after the City submits an initial test development plan (see below).

Third, by order dated July 15, the Special Master set a date for the first meeting of experts concerning the development of a new entrance test. The Special Master's prior report indicated that the Special Master had directed the parties' experts to hold an initial meeting no later than July 30. However, as a result of the acceleration of the hearing on Exam 6019 and scheduling issues on the part of the various experts, the parties reported that they were unable to find a date on which all of their experts were available to hold the meeting. After consultation with the parties, the Special Master established a new date for the initial meeting and directed the parties to take certain steps to ensure the new meeting was productive. The current schedule is as follows:

- August 20, 2010 – The experts for all parties and the Special Master meet to discuss a plan for developing the new test. The Special Master ordered that Counsel for the parties may attend the initial meeting. The Special Master also ordered that counsel and one representative from each of the Uniformed Firefighters Association (“UFA”) and Uniformed Firefighters Officers Association (“UFOA”) may attend the initial meeting for the purpose of communicating directly with the experts about the test development process.<sup>3</sup>
- August 13, 2010 – The parties’ experts exchange with each other and submit to the Special Master a list of proposed preliminary issues for discussion at the initial meeting.
- August 18, 2010 – Defendant’s expert sends a proposed agenda for the Initial Meeting to all parties and to the Special Master, taking into account the preliminary issues raised by the other parties’ experts.
- September 1, 2010 – Defendant submits a test development plan to the Special Master.

(Special Master’s Order No. 7, Dkt. No. 479).

At the July 27 conference, the Special Master impressed upon the parties the importance of working as expeditiously as possible in developing the New Test.

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Pursuant to the Appointment Order, the Special Master is required to submit a report at least every 90 days after the parties begin the joint development of the New Test. That process will formally begin with the initial meeting on August 20, 2010, and

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<sup>3</sup> By order dated June 17, 2010, the Special Master ordered that the UFA and UFOA could submit any recommendations and/or issues they wish to raise in connection with the development of the New Test by July 14, 2010, and that the parties should share those submissions with their experts (Special Master’s Order No. 5, Dkt. No. 455, ¶2). On July 8, 2010 and July 14, 2010, the UFOA and UFA submitted recommendations (Dkt. Nos. 465 & 478). In the weekly conferences since those submissions, the Special Master has reiterated that all parties should forward amici’s written recommendations to their consultants.

accordingly, the Special Master will make her next report to the Court 90 days from today, provided, of course, that the Court does not require a report in the interim (Appointment Order, ¶4).

/s/ Mary Jo White

Mary Jo White

Dated: July 30, 2010

# **Exhibit 1**

[REDACTED]

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**From:** Fortino, Philip A.  
**Sent:** Monday, July 26, 2010 10:44 AM  
**To:** 'Richard A. Levy'; 'Lemonedes, James'; 'Seeley, Sharon (CRT)'; 'Fraenkel, William'; 'Robert Stroup'; 'DCharney@ccrjustice.org'; 'Dana Lossia'; 'Burrell, Meredith (CRT)'; 'Swedish, Jennifer (CRT)'; 'Schachner, Elliot (USANYE)'  
**Cc:** White, Mary Jo; Hogan, Mary Beth; Dike, Chinelo E.  
**Subject:** United States v. City of New York  
**Follow Up Flag:** Email: Saved To Accutrac 07/26/10 - 94495/1000  
**Flag Status:** Completed  
**Attachments:** Shane Pittman Resume.pdf

All Parties:

I am writing , on behalf of Special Master White , to advise you that she intends to retain Dr. Shane Pittman, an industrial/organizational psychologist and president of The Pittman McLenagan Group, L.C., as a consultant to assist the Special Master in performing the duties under paragraph 2 of the Court's Order of June 1, 2010 (the "Appointment Order"). A copy of Dr. Pittman's resume is attached to this message.

Dr. Pittman's duties may include the following:

- Advising the Special Master and her staff on technical aspects of test design;
- Acting as a liaison between the Special Master and the parties' test design experts;
- Monitoring the parties' progress in developing a new firefighter selection process by participating in meetings among the parties' experts and, where appropriate, the actual construction of the new exam;
- Bringing to the attention of the Special Master and the parties any issues that in her opinion depart from best practices or could undermine the validity of the new exam; and
- In the event that disagreements arise in the test design process, facilitating consensus among the parties' experts.

Pursuant to the Appointment Order, the Special Master will submit a budget for Dr. Pittman's work to the Court for approval.

Sincerely,  
Phil Fortino

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Philip A. Fortino  
Debevoise & Plimpton LLP  
919 Third Avenue  
New York, New York 10022  
Office: +1 212 909 6390  
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Mobile: +1 646 441 1380

7/28/2010



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THE PITTMAN MCLENAGAN GROUP, L.C.

**Shane Pittman  
President**

**Summary of  
Experience:**

Co-founder and President of THE PITTMAN MCLENAGAN GROUP, L.C. specializing in services to enhance human resource assets of diverse, large and small organizations. Twenty-nine years of consulting experience to small and large organizations. Experience is specialized in customized personnel assessment. Extensive experience in both private and public organizations.

**Summary of  
Education:**

Completed Doctorate in Industrial/Organizational Psychology in 1998 from George Mason University. Completed Masters in Industrial/Organizational Psychology in 1988 from George Mason University. Graduated cum laude from psychology undergraduate program at Millsaps College. First in high school class.

**Major Accomplishments:**

- Founded THE PITTMAN MCLENAGAN GROUP, L.C. to explore new areas in the marketplace.
- Developed expertise in customized assessment development.
- Designed and directed innovative video assessment procedures tailor-made to meet client needs.
- Became youngest vice president in prior consulting firm's history while in graduate school.
- Guided clients in implementing new assessment technologies.
- Elected and served in various positions including President for PTC/MW.

**Technical  
Skills:**

Assessment centers, job analysis, cognitive/knowledge multiple-choice exams, performance appraisal, training, organizational development/analysis, group process, team building, statistical analysis.

**Membership:**

American Psychological Association; Division 14 (APA); Personnel Testing Council, President-Elect, Past Board Member and Committee Chair; International Personnel Management Association; International Personnel Management Assessment Council.

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***Shane Pittman, page 2***

**Education:**

George Mason University, Fairfax, Virginia  
Doctorate of Philosophy, 1998  
Master of Arts, December, 1988  
Industrial/Organizational Psychology

Millsaps College, Jackson, Mississippi  
Bachelor of Arts, December, 1980  
Psychology, Graduated Cum Laude

Tylertown High School, Tylertown, Mississippi  
Graduated 1st in class, May, 1976

**Employment History:**

October, 1992

to present      President, THE PITTMAN MCLENAGAN GROUP, L.C.

1981-1992      Employment History at Morris & McDaniel, Inc.

Advanced from intern to vice-president and director of Washington, D.C. office. Duties included all external efforts of the firm in marketing, bid submittal, design, implementation, client support and quality control. Provided technical support to meet project requirements; i.e., job analysis, assessment development and implementation, training development and implementation, performance appraisal, etc. Responsible for strategic planning, financial and budgetary decisions for daily and long-term planning, hiring and training employees, research support and technology reviews.

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***Shane Pittman, page 3***

**Examples of Professional Experience:**

- Provided advice and expertise to a public sector organization operating under a long-standing consent decree. Worked with plaintiffs' attorneys to design and modify selection procedures. Gained acceptance of all involved parties of a set of guiding principles for work conducted by the organization and by other outside consultants.
- Developed and administered promotional exams for various ranks within both fire and police organizations to include written knowledge exams and oral examinations. Conducted this process over multiple processes. Provided recommendations for changes to process.
- Conducted a review of a police organization's entry-level police officer selection procedures and made recommendations for changes including a new job analysis study and creation of a criterion- validated entry level paper and pencil test and physical agility test.
- Developed and implemented video based assessment tools for use with a wide range of positions including police and fire ranks.
- Created entry-level assessment for police and fire including innovative techniques for reducing adverse impact.
- Developed selection procedures for a range of positions for a national temporary placement organization including an organizational culture match inventory.
- Developed fire instructor certification exams for a state system. The first of its kind within the state, it incorporated state-of-the-art, video-based techniques.
- Construct, on an ongoing basis, structured interviews for over 1000 job titles for a public utility to be used for selection and promotion.
- Provide Test Specialist services for a utility company and a transportation company.
- Developed promotional processes for multiple management positions within an international travel organization to include job analysis, exercise development, and procedure development.
- Conducted job analysis for a national mail organization for management positions to use in succession planning.
- Developed strategic plan for a quality control department including performance benchmarks and quality management concerns.

*Shane Pittman, page 4*

**Examples of Professional Experience (Continued):**

- Developed and conducted Quality Awareness and Continuous Improvement Training for a quality control department.
- Administered management training programs for various organizations including instructional design, development of training competencies and conduct of training.
- Conducted team building and process consultation for a large department within a utility company.
- Developed selection test for an entry-level position in a gourmet grocery store chain.
- Created multiple-choice knowledge exams, multiple-choice in-baskets, and skills assessments/assessment centers for a variety of management positions.
- Conducted national job analysis project for craft positions within the mechanical division of a national passenger rail organization for implementation of training strategies and selection approaches.
- Implemented performance appraisal for several public sector organizations.
- Designed and implemented survey instruments for various projects.

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***Shane Pittman, page 5***

Examples of Reports & Papers:

McDaniel, M.H. and Pittman, S., Alexandria Fire Department, Final Report, Development of Promotional Procedures for the Rank of Battalion Chief, Washington, D.C., 1986.

McLenagan, M. and Pittman, S., Amtrak Mechanical Department, Workforce Study for the Mechanical Department, Washington, D.C.: Pittman & Associates, L.C., 1994.

McLenagan, M. and Pittman, S., Architect of the Capital, Job Analysis and Development of Performance Standards for Train Operators, Washington, D.C.: Pittman & Associates, L.C., 1996.

McLenagan, M. and Pittman, S., U.S. Postal Inspection Service, Management Position Job Analysis, Washington, D.C.: Pittman & Associates, L.C., 1996.

Pittman, S. and McLenagan, L.M., Amtrak Police Department, Job Analysis Update for Two Police Ranks - Sergeant and Lieutenant, Washington, D.C.: Pittman & Associates, L.C., 1994.

Pittman, S. and McLenagan, L.M., Amtrak Police Department, Survey of Promotional Procedures, Washington, D.C.: Pittman & Associates, L.C., 1994.

Pittman, S. and McLenagan, L.M., Amtrak Police Department, Final Report, Development of the Promotional Procedures for the Position of Sergeant. Washington, D.C.: Pittman & Associates, L.C., 1994.

Pittman, S. and McLenagan, L.M., Amtrak Police Department, Final Report, Development of the Promotional Procedures for the Position of Lieutenant. Washington, D.C.: Pittman & Associates, L.C., 1994.

Pittman, S. and McLenagan, L.M., Amtrak Mechanical Department, Job Analysis Report for Selected Craft Positions with the Mechanical Department, Washington, D.C.: Pittman & Associates, L.C., 1994.

Pittman, S. and McLenagan, M. Calvert County Sheriff's Department, Report of Transportability Study for International Personnel Management Association's Entry Level Police Officer Exam to the Entry Level Sheriff's Deputy Position. Washington, D.C.: Pittman & Associates, L.C., 1997.

Pittman, S. and McLenagan, L.M., Henrico County Fire Department, Recommendations of Testing Procedures for Two Ranks within the Fire Department, Washington, D.C.: Pittman & Associates, L.C., 1993.

Pittman, S. and McLenagan, L.M., Prince George's County Police Department, Content Validity Report for the Written Examination for Captain, Washington, D.C.: Pittman & Associates, L.C., 1996.

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***Shane Pittman, page 6***

Examples of Reports & Papers (Continued):

Pittman, S. and McLenagan, L.M., Prince George's County Police Department, Content Validity Report for the Written Examination for Corporal, Washington, D.C.: Pittman & Associates, L.C., 1995, 1996, 1997.

Pittman, S. and McLenagan, L.M., Prince George's County Police Department, Content Validity Report for the Written Examination for Lieutenant, Washington, D.C.: Pittman & Associates, L.C., 1996.

Pittman, S. and McLenagan, L.M., Prince George's County Police Department, Content Validity Report for the Written Examination for POFC, Washington, D.C.: Pittman & Associates, L.C., 1995, 1996, 1997.

Pittman, S. and McLenagan, L.M., Prince George's County Police Department, Content Validity Report for the Written Examination for Sergeant, Washington, D.C.: Pittman & Associates, L.C., 1996.

Pittman, S. and McLenagan, L.M., Prince George's County Police Department, Review and Analysis of Promotional Procedures, Washington, D.C.: Pittman & Associates, L.C., 1997.

Pittman, S. and McLenagan, L.M., Prince George's County Fire/EMS Department, Content Validity Report for the Promotional Process for Fire Technician, Washington, D.C.: The Pittman McLenagan Group, L.C., 2009.

Pittman, S. and McLenagan, L.M., Prince George's County Fire/EMS Department, Content Validity Report for the Promotional Process for Fire Captain, Washington, D.C.: The Pittman McLenagan Group, L.C., 2009.

Pittman, S. and McLenagan, L.M., Prince George's County Fire/EMS Department, Content Validity Report for the Promotional Process for Battalion Chief, Washington, D.C.: The Pittman McLenagan Group, L.C., 2008.

Pittman, S. and McLenagan, L.M., Prince George's County Fire/EMS Department, Content Validity Report for the Promotional Process for Fire Lieutenant, Washington, D.C.: The Pittman McLenagan Group, L.C., 2008.

Pittman, S. and McLenagan, M. Sato, Final Report for the Development of a Skills Assessment Program for Customer Manager. Washington, D.C.: Pittman & Associates, L.C., 1996.

Pittman, S. and McLenagan, M. Sato, Final Report for the Development of a Skills Assessment Program for Division Manager. Washington, D.C.: Pittman & Associates, L.C., 1996.

Pittman, S. and McLenagan, M. Sato, Final Report for the Development of a Skills Assessment Program for Regional Operations Manager. Washington, D.C.: Pittman & Associates, L.C., 1996.

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**Shane Pittman, page 7**

Examples of Reports & Papers (Continued):

Pittman, S. and Morris, D.M., Prince William County Department of Fire and Rescue, Job Analysis Report, Development of the Promotional Process for Fire Lieutenant, Washington, D.C.: Morris & McDaniel, Inc., 1989.

Pittman, S. and Morris, D.M., Prince William County Department of Fire and Rescue, Final Report, Development of the Promotional Process for Fire Lieutenant, Washington, D.C.: Morris & McDaniel, Inc., 1989.

Pittman, S. and Morris, D.M., Prince William County Department of Fire and Rescue, Job Analysis Report, Development of the Promotional Process for Fire Captain, Washington, D.C.: Morris & McDaniel, Inc., 1987.

Pittman, S. and Morris, D.M., Prince William County Department of Fire and Rescue, Final Report, Development of the Promotional Process for Fire Captain, Washington, D.C.: Morris & McDaniel, Inc., 1987.

Pittman, S. and Morris, D.M., Rockville City Police Department, Final Report, Development of the Promotional Process for the Position of Police Sergeant, Washington, D.C.: Morris & McDaniel, Inc., 1987.

Pittman, S. and Morris, D.M., Rockville City Police Department, Final Report, Development of the Promotional Process for the Position of Police Sergeant, Washington, D.C.: Morris & McDaniel, Inc., 1989.

Pittman, S. and Morris, D.M., United States Capitol Police, Content Validity Report for the Position of Sergeant, Washington, D.C.: Morris & McDaniel, Inc., 1988.

Pittman, S. and Morris, D.M., United States Capitol Police, Content Validity Report for the Position of Lieutenant, Washington, D.C.: Morris & McDaniel, Inc., 1988.

Pittman, S. and Morris, D.M., United States Capitol Police, Content Validity Report for the Position of Detective, Washington, D.C.: Morris & McDaniel, Inc., 1988.

Pittman, S. and Morris, D.M., United States Capitol Police, Content Validity Report for the Position of Captain. Washington, D.C.: Morris & McDaniel, Inc., 1988.

Zukin, L., McLenagan, L.M. and Pittman, S. *Mental models of minimal competence: can they be shared?* Paper presented at the 13<sup>th</sup> annual conference of the Society for Industrial/Organizational Psychology, April 1998, Dallas, Texas